THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23845 OF 2003

28-07-2005

Between:

Mylavarapu Satya Someswara Rao @ Sombabu, S/o Raja Babu,

R/o. Mounjipadu, Pentapadu Mandal,

West Godavari District.

... PETITONER

AND

The Superintendent of Police, West Godavari District, Eluru and others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The petitioner seeks a writ of Mandamus declaring the action of the respondents in opening a rowdy sheet against the petitioner as being violative of Article 21 of the Constitution of India.

The petitioner is a member of Tadepallygudem Bar Association. On a compliant given by one Smt.G.Nagakumari, a case in crime No.274 of 2003 was registered against the petitioner and four others under Sections 354, 366 read with 511, 341, 290 read with Section 34 of Indian Penal Code, 1860. Learned counsel for the petitioner submits that it is a false case which was registered at the instance of some of the busybodies of the locality. He further contends that as per A.P.Police Standing

Order 742, rowdy sheet be opened against the persons who habitually commit, attempt to commit or abet the commission of offences involving breach of peace, persons bound over under the provisions of Code of Criminal Procedure and persons who have been convicted more than once in two consecutive years and that the petitioner does not come in this category and hence rowdy sheet cannot be opened against the petitioner.

Counter affidavit is filed by the respondents opposing the writ petition. It is stated in the counter that the petitioner in involved in crime No.274 of 2003 and also in crime No.349 of 2003 on the file of the Town P.S., Tadepalligudem and investigation is pending. It is also stated that there are large number of representations from general public against the petitioner's involvement in unlawful activities causing breach of peace and the allegation that respondents are interfering in the day to day affairs of the petitioner, is denied.

The questions raised in this writ petition are squarely covered by the judgment of this Court in **S.Satyanarayana v. State of A.P.**. Therefore, the writ petition is disposed of directing the fourth respondent to consider the request of the petitioner for closing rowdy sheet following the principles laid down in **Satyanarayana**'s case (supra), which are as under.

i. A mere conviction or convictions cannot be thumb rule for opening history sheet or rowdy sheet though history sheet can be opened even without conviction for the limited purpose of watching a person discreetly.

ii. At the time of opening a history sheet or rowdy sheet a competent officer has to apply mind taking into consideration the social background the proceedings in the criminal trial if a person is convicted and all other relevant material before passing orders for opening history sheet or rowdy sheet.

iii. A history sheet/rowdy sheet is retained for the period of two years only unless it is ordered to be closed by the Superintendent of Police earlier than two years. During the initial period of two years, the history sheeter or rowdy sheeter is entitled to request the concerned police officer to close the history sheet or rowdy sheet which has to be considered by the police officer in an objective manner.

iv. While passing orders for retention of history sheet for another year more, the competent Sub-Divisional Police Officer has to take into consideration the various factors, to wit, surveillance reports, the crime history with reference to the breach of peace of society during the preceding year, the social and political background of the person etc. If there is a preponderance of opinion among the surveillance officers that the person did not come up for any adverse notice and leading a blemishless family life it is a strong circumstance to order for closure of the history sheet or rowdy sheet.

v. When an order is passed by the competent police officer for retention of the history sheet by simply endorsing on the report/letter of the S.H.O. a single line order, that by itself cannot be a ground to continue the rowdy sheet.

vi. Any order passed by the Sub-Divisional Police Officer shall have to be supported by reasons. The reasons need not be communicated but to be recorded.

vii. The orders for opening or retention of history sheet/rowdy sheet are passed under the administrative instructions/guidelines. If such an order is challenged, the competent authority has to place the reasons before the Court which justify retention of history sheet/rowdy sheet. Further, it is always better for the Police Officer to record his own reasons for retention/opening of the history sheet/rowdy sheet.

viii. In the event as mentioned in conclusion 4.7 it is always open to the Court of judicial review to direct the Sub-Divisional Police Officer to reconsider his decision and pass appropriate orders. But whatever be the events in the guise of opening/retention of history sheet a person's liberty, right to privacy and other freedoms under Article 19 of the Constitution of India cannot be infringed under any circumstances.

ix. It is to be remembered that any order of the competent police officer which is not supported by reasons is itself unreasonable and arbitrary and can be termed as mala fide in the sense that it is contrary to the purpose for which the Police Officer is authorised under relevant Police Standing Orders. Hence, if the Court comes to the conclusion that the order of the Sub-Divisional Police Officer is contrary to the purpose for which surveillance is authorised, the action shall be set at naught forthwith on the principle that what is unreasonable and unfair is arbitrary and such arbitrary exercise of power amounts to exercising, the power mala fide.

The petitioner, however, is at liberty to approach the fourth respondent by filing appropriate representation for closing rowdy sheet, if the same is still continued.

The writ petition is, accordingly, disposed of. No costs.

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(V.V.S.RAO,J)

28.07.2005.

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